IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 260 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

AHMEDABAD MASKETI DEALERS CO. OP. WAREHOUSING SOC. LTD.

Appearance:

MR AKIL KURESHI FOR MR MANISH R BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 07/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

1. In this Reference at the instance of the Revenue the following question of law was referred for our opinion with reference to assessment year 1974-75:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to the deduction of Rs. 20,000 in view of the provisions of section 80P(2)(c) of the I.T.Act, 1961?"

2. At the hearing of this Reference, Mr. Kureshi for the Revenue urged that letting out of shops by the assessee could not be said to be a business and therefore, the deduction of Rs. 20,000/- was not allowable under Section 80P(2)(c) of the Act.

3. We are unable to accept the argument for the simple reason that the Tribunal has given a finding in paragraph 10 of its order that `according to the object clause the assessee society's object was to carry on the trade of building and of buying, selling, hiring, letting and developing the land in accordance with cooperative principles with a view to provide godowns and shops for members engaged in or connected with cloth trade'. The assessee has been letting out shops to its members. In this set of circumstances, the Tribunal rightly held that the Society was entitled to avail of the deduction under Section 80P(2)(c) of the Act.

4. So far as the question of rent for the shops not being eligible for deduction under Section 80P(2)(e) is concerned, the Tribunal has admittedly not given the said benefit to the assessee and rightly so in view of the decision of this Court in CIT vs. Ahmedabad Maskati Cloth Dealers Cooperative Warehouses Society Ltd. (1986) 162 ITR 142.

In view of the above, we answer the question in the affirmative i.e., in favour of the assessee and against the Revenue.

The Reference stands disposed of accordingly.

There shall no be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(M.S. SHAH, J)

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